

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.41 OF 2006

IN

SUIT NO.2443 OF 2005

...

Lloyd Insultions (India)

Limited

...Plaintiff

v/s.

General Manager

Central Railway & Ors.

...Defendants

...

Mr.Behrin Kamdin i/b Purohit & Purohit for the
Plaintiff.

Mr.S.C.Dhawan for Defendants Nos. 1 & 2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 19TH JUNE, 2006

P.C.:

1. The Plaintiff has filed this suit claiming a decree in the amount of Rs.21,47,950/- with interest at the rate of 18% p.a. on the principal sum of Rs.13,30,000/-.

2. So far as the suit against the Defendants Nos. 1 & 2 is concerned, admittedly the claim against the Defendants Nos. 1 & 2 is not based on any negotiable instruments. The Plaintiff is also not seeking recovery of debt from the Defendants Nos. 1 & 2 on the basis of any written contract or enactment or on a guarantee. Therefore, the summary suit against the Defendants Nos. 1 & 2 is clearly filed by the Plaintiff without there being any justification whatsoever for filing a summary suit against the Defendants Nos. 1 & 2. In the plaint even an

attempt has not been made to justify filing of the suit against the Defendants Nos. 1 & 2.

3. So far as Defendant No.3 is concerned, at the outset, the learned Counsel appearing for the Plaintiff has stated that the claim against the Defendant No.3 is based on an admission contained in the documents at Exh.C dated 5th February, 2004. Perusal of that documents shows that those documents are minutes of the meeting. Perusal of those minutes shows that meeting was attended by three persons on behalf of the Plaintiff and two persons on behalf of the Defendant No.3. Names of those two persons are Mr.Pravin Kumar Sinha and Mr.Viswajeet Vardhan. According to cause title of the plaint, Defendant No.3 Jai Mata Di Construction is a proprietary concern, of which proprietor is Sudhakar Sinha. Thus, Sudhakar, the proprietor of the Defendant No.3 is not one of the persons who attended the meeting dated 5th February, 2004. The meeting dated 5th February, 2004 is referred to in paragraph 5 of the plaint, wherein it is stated that the meeting dated 5-2-2004 was between the Defendant No.3 Sudhakar and the Plaintiff. Nowhere an allegation is made that the two persons who attended the meeting dated

5-2-2004 were authorised by the proprietor of the Defendant No.3 to attend the meeting on his behalf. The statement made in paragraph 5 is factually incorrect. Neither there is any pleadings nor there is any document on record which can enable the Plaintiff to fasten the liability on the Defendant No.3 on the basis of the documents at Exh.C. The learned Counsel for the Plaintiff, then, submitted that the Plaintiff relies on the invoices to maintain that the summary suit against the Defendant No.3 is maintainable. The learned Counsel for the Plaintiff invited my attention to paragraph 2 of the plaint. Paragraph 2 of the plaint states that in or around December, 2001 the Defendant placed an order for supply, excavation, erection and transfer of 6 pre-fabricated buildings (Pora Cabins) for the OFC Project of Central Railway on its Vasai-Diva-Panvel Section.

4. The averment does not clarify as to which of the three Defendants placed the order. The Plaintiff does not rely on the order in the plaint. Copy of that order is not produced. Thus, it cannot be said that the Plaintiff's suit is based on any order. It is further pertinent to note here that even there is

no averment made in the plaint that that order amounts to a written contract between the parties. Thus, it is clear that so far as Defendants Nos. 1 & 2 are concerned, there was no justification whatsoever for filing a summary suit against them. So far as Defendant No.3 is concerned, a summary suit has been filed against the Defendant No.3 by making a false averments in the plaint. Obviously, therefore, summons for judgment has to be disposed of granting unconditional leave to defend the suit to the Defendants. But that is not end of the matter. The Plaintiff has unnecessarily and without there being any justification filed a summary suit against the Defendants, and consumed considerable time of the court in arguing the summons for judgment. On being repeatedly asked, the learned Counsel for the Plaintiff was not able to give any reason or justification for instituting a summary suit against the Defendants. In these facts and circumstances, in my opinion, to discourage the litigant from abusing the process of the court in this manner, exemplary costs are to be imposed on the Plaintiff for taking out such summons for judgment. Defendant No.1 is the General Manager of the Central Railway, Defendant No.2 is a company owned and controlled by Government

of India. In my opinion, taking overall view of the matter, it will be appropriate to direct the Plaintiff to pay as and by way of costs of this summons for judgment Rs.25,000/- to each of the three Defendants. The amount of costs is directed to paid by the Plaintiff to the Defendants within a period of four weeks from today. Summons for judgment disposed of. Defendants are granted unconditional leave to defend the suit. Written statement to be filed within a period of eight weeks from today. Suit to be transferred to commercial cause list.

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